89-969 (1)

Supreme Court, U.S.
FILED
DEC 15 1989
JOSEPH F. SPANIOL, JR.
CLERK

IN

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

NO_____

CURTIS L. WRENN
P. O. Box 203
Fort Drum, NY 13603,
Petitioner.

vs

JAMES G. LEDBETTER, COMMISSIONER
DEPARTMENT OF HUMAN RESOURCES
STATE OF GEORGIA
47 Trinity Avenue. S.W.
Atlanta, GA 30334

-and-

MYERS R. KURTZ, INDIVIDUALLY AND AS
SUPERINTENDENT OF CENTRAL STATE HOSPITAL
Central State Hospital
Milledgeville, GA 31062,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

CURTIS L. WRENN, PRO SE
P. O. Box 203
Fort Drum, NY 13603
Tel: (315) 772-7817

10pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether the District Court abused its discretion in granting summary judgment to the defendants.

2. Whether the plaintiff presented a prima facie case of unlawful discrimination on the basis of race and retaliation, pursuant to the guidelines established by this Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-05, 5 FEP 965.

3. Whether the lower courts abused their discretion in failing to consider the investigations and findings of the EEOC.

4. Whether the defendants in this mixed motives case (racial discrimination, retaliation and conspiracy to deprive) presented admissible evidence to demonstrate conclusively that they were entitled to summary judgment in their favor.

5. Whether the defendants demonstrated, by a preponderance of the evidence, that they were entitled to judgment in their favor, on the basis of this Court's guidelines promulgated in Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 254, 101 S. Ct. 1089, 1094, 67 L.Ed.2d 207 (1981).

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JURISDICTIONAL STATEMENT

The jurisdiction of this Court is invoked under Title 28, United States Code, Sections 1254(1), 1651 and 1915. This Court is being asked to review the continuing denial of equal employment opportunity to the petitioner by present and former employees of the States of Ohio and Georgia.

Jurisdiction is also invoked under the Constitution and laws of the United States, including but not limited to the First and Fourteenth Amendments, and Title VII of the Civil Rights Act of 1964, as amended. More specifically, the Court is being asked to promulgate guidelines regarding the admissibility as evidence in the federal courts of investigations and findings of the U.S. Equal Employment Opportunity Commission, pursuant to The Equal Employment Opportunity Act of 1972.

The jurisdiction of this Court is also invoked to review the actions of the lower courts, in that they have made decisions

which are contrary to decisions of this Court and the other courts of appeals. Moreover, the decisions, if left standing, will invalidate a mandate of Congress, i.e., The Equal Employment Opportunity Act of 1972.

This Court is being asked to review the decisions of the District Court and the Court of Appeals, both courts having made decisions against the petitioner without considering the facts and applicable case-law. If this decision is permitted to stand it will further encourage employers to continue their practice of denying the petitioner equal employment opportunity.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment I:

> Congress shall make no law ... abridging the freedom of speech ...; or the right of the people peaceably ... to petition the Government for a redress of grievances.

United States Constitution, Amendment IV:

> The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause.

United States Constitution, Amendment V:

> Nor shall any person ... be deprived of life, liberty, or property, without due process of law ...

United States Constitution, Amendment XIV:

> Nor deny to any person within its jurisdiction the equal protection of the laws.

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OPINION BELOW

1. The petitioner filed a charge of unlawful employment practices against the respondents in this case with the EEOC and the Georgia Fair Employment Practices, in connection with the employer's refusal to consider his application for the position of Director of the Georgia Veterans Home. The agencies issued a "determination" of "reasonable cause to believe" the petitioner had been discriminated against on the basis of race and retaliation. See Exhibit J.

2. The petitioner had previously filed charges of discrimination against Respondent Kurtz in connection with the failure to hire him for four positions advertised by the State of Ohio. The EEOC issued a determination of "reasonable cause" against Kurtz and other Ohio officials. See, e.g., Docket Nos 88-6494 and 88-6479 of this Court.

3. The petitioner filed a complaint in the United States District Court. On motion by the defendants, the District Court

granted summary judgment in favor of the employer (Ex. D). The petitioner appealed the decision to the Eleventh Circuit (Ex. K, L and M). The appealed was denied (Ex. C) and petitioner requested reconsideration which was also denied (Ex. A).

STATEMENT OF THE CASE

1. Plaintiff was formerly employed by the Ohio Department of Mental Health from December 1979 to December 1980, when he, without being charged and without any prior notice or explanation, was summarily removed from the position of Superintendent. The petitioner filed a charge with the EEOC which determined that the firing was racially motivated in response to the petitioner's refusal drop an earlier charge. See, Sup. Ct. Docket No 88-6494.

2. In response to an advertisement by the State of Georgia, the petitioner submitted his application for the position

of Director of the Georgia War Veterans Home. He met the employer's stated requirements/qualifications for the position, but despite his qualifications he was denied equal employment opportunity, including but not limtited to being denied an interview.

3. The petitioner's qualifications for the position at issue in this case are as indicated by Exhibits J and K.

4. The investigation conducted by the Georgia Fair Employment Practice Office revealed that the petitioner was the ONLY applicant who scored 100 who was not interviewed. See Exhibit J.

5. The United States District Court dismissed petitioner's claims allegedly because the employer had articulated a legitimate reason for rejecting his application. The Court of Appeals upheld the decision. See Exhibits E, D, C, B and A.

6. The petitioner brings this appeal on the basis that the respondents did not prove conclusively and/or beyond a

reasonable doubt their entitlement to summary judgment, and that the District Court abused its discretion and that the decisions of the lower courts are clearly erroneous. See, e.g., Pullman-Standard v. Swint, 456 U.S. 273, 187-90, 102 S. Ct. 1781, 1789-91, 72 L.Ed.2d 66 (1982).

REASONS FOR GRANTING WRIT

ARGUMENT I - ENTITLEMENT TO SUMMARY JUDGMENT NOT DEMONSTRATED BY EMPLOYER

1. The admissible evidence presented by the plaintiff (Ex. J and K) clearly demonstrated that he had been denied equal employment opportunity by the employer. A review of the entire record in this case will clearly demonstrate that the standards for granting summary judgment were not adhered to by the District Court in this case.

2. All of the evidence before the court on a summary judgment motion must be construed in a light most favorable to the non-moving party. Moreover, on a motion for

summary judgment, the moving party bears the burden of proving conclusively that no genuine issue of material fact exists, and that the moving party is entitled to summary judgment as a matter of law. See, e.g. Smith v. Hudson, 600 F.2d 60 (6th Cir. 1979), cert. dismissed, 444 U.S. 986 (1979).

3. The record before the District Court clearly demonstrated that there were triable issues to be resolved. For example, why the employer violated its laws and regulations when it denied the petitioner an interview for the position at issue. "The party moving for summary judgment has the burden of clearly establishing the lack of any triable issue of fact by the record properly before the court." See, e.g. Bell vs Cameron Meadows Land Co., (CA 9th Cir. 1982) 669 F.2d 1278; United States v. Articles of Device, 527 F.2d 1008, 1011 (6th Cir. 1976).

4. Finally, where conflicting inferences may be drawn from the evidence

before the Court on a motion for summary judgment, the Court must draw those inferences against the movant and in favor of the non-movant. See, e.g., United States v. Diebold, Inc., 369 U.S. 654, 82 S.Ct. 993, 8 L.E.2d 176 (1962). Moreover, it has been recognized that summary judgment is particularly inappropriate in the context of employment discrimination retaliation claims. See, e.g., Romero v. Union Pacific R.R., 615 F.2d 1303, 22 F.E.P. 338, 343 (10th Cir., 1980); Keys v. Lutheran Family Services, 668 F.2d 356, 29 F.E.P. 253, 254-255 (8th Cir., 1981).

5. Accordingly, the employer has not established the lack of any triable issues. Where, as here, the movant has not sustained this burden, summary judgment is not warranted. See, e.g., Adickes v. S.H. Kress & Co. (1970) 398 US 144, 161, 90 S Ct 1598, 26 L Ed2d 142.

ARGUMENT II - PETITIONER'S PRIMA FACIE CLAIMS (RACE AND RETALIATION)

NOT REFUTED BY THE EMPLOYER

1. The central issue in this case is the continuing concerted actions of present and former employees of the State of Ohio to deny the petitioner equal employment opportunity. In that connection, this case is related to the following related cases previously before this Court:

a. Docket No 86-6835 (Petitioner denied employment because of an adverse employment reference by former employee of the State of Ohio).

b. Docket No 86-6629 (Petitioner denied employment because he had been fired by the State of Ohio).

c. Docket No 87-5454 (Petitioner denied employment because of public statements by officials of the State of Ohio).

d. Docket No 88-6494 (Petitioner was fired by the State of Ohio because he refused to drop an earlier EEOC charge).

2. To establish a prima facie case of retaliation under 42 USC 2000-e(3)(a) the

plaintiff must establish (1) statutorily protected expression (such as filing a charge of discrimination with the EEOC), (2) an adverse employment action (such as the refusal to hire), and (3) a causal link between the protected expression and the adverse action. Exhibits J and K clearly demonstrate the petitioner met these requirements. See, e.g., McDonnell Douglas Corp. v. Green, 411 U.S. 792, 796, 93 S. Ct. 1817, 1821, 36 L.Ed.2d 668 (1972); Womack v. Munson, (8th Cir. 1980), 619 F.2d 1292, 1298, 22 FEP 1079, 1083, cert. denied, 450 U.S. 979 (1981); Parker v. Baltimore & Ohio Railroad (DC Cir. 1981), 652 F.2d 1012, 25 FEP 889.

3. In summary, this case turns on the unequal treatment of the petitioner (a Negroid American) in comparison with white applicants (in that he was not interviewed). There can be no doubt that such an unequal application of a personnel policy or procedure presents a prima facie case of

discrimination. See, e.g., Cohen v. Fred Mayer, Inc., 686 F.2d 793, 29 F.E.P. 1603 (8th Cir., 1981) (holding that where a personnel policy was applied in a disparate manner, a prima facie case of retaliatory discrimination is made out despite the facially neutral nature of the policy). See also, McDonnell and Burdine.

ARGUMENT III - THE EEOC DETERMINATIONS NOT CONSIDERED BY LOWER COURTS

1. Although reports from the EEOC are not binding upon the federal courts and their admissibility into evidence is discretionary with the trial court, this Court and numerous other federal courts have recognized their value as evidence given the expertise of the EEOC in investigating and evaluating discrimination claims. See, e.g., Heard v. Mueller Co., 464 F.2d 190, 194 (6th Cir., 1972) (EEOC determinations can be "highly probative"); Accord, Smith v. Universal Services, Inc., 454 F.2d 154, 4 F.E.P.187, 188-189 (5th Cir., 1972); Plummer

v. Western International Hotels, Inc., 656 F.2d 502, 26 F.E.P. 149 (9th Cir., 1981). See, also Blizzard v. Fielding, 572 13, 17 F.E.P. 149 (1st Cir., 1978) (EEOC findings are entitled to "great deference").

2. The District Court clearly abused its discretion when it did not, as suggested by this Court, give deference to the determinations made by the EEOC in this and other related cases. See, e.g., Trafficante v. Metropolitan Life Insurance Co., 409 U.S. 205, 210, 93 S.Ct. 364, 367, 34 L.Ed.2d 415 (1972). See Exhibit J.

ARGUMENT IV - EMPLOYER'S BURDEN IN THIS MIXED-MOTIVES CASE NOT MET

1. Petitioner's allegations in the case at bar involve discrimination on the basis of race, retaliation and concerted action by present and former employees of the State of Ohio to deprive the petitioner of equal employment opportunity. The key question here is whether the employer's articulated reason for refusing to con-

sider the petitioner's application was sufficient, in this mixed-motives case, to overcome his prima face case of unlawful employment practice on the basis of race and retaliaiton.

2. The employer in this "mixed-motives" case, legitimate business necessity vs. the illegitimate retaliation against the appellant for his legitimate opposition to unlawful employment practice, has not proven by a prepqnderance of the evidence that it would have made the same decision even if the petitioner was of a different race (i.e., white) or if he had not previously opposed the unlawful employment practices of the States of Ohio and Georgia. See, e.g., Price Waterhouse v. Ann B. Hopkins, cert. to U.S. CA D.C. Cir., Case No 87-1167, May 1, 1989, 57 LW 4470, 4473, where the Supreme court held:

> "This court's prior decisions demonstrate that the plaintiff who shows that an impermissible motive played a motivating part in an adverse employment decision thereby places the burden on the defendant to show that it would have made the

same decision in the absence of the unlawful motive." Ibid. 57 LW 4470

-and-

"An employer may not, in other words, prevail in a mixed-motives case by offering a legitimate and sufficient reason for its decision if that reason did not motivate it at the time of the decision. ... The employer instead must show that its legitimate reason, standing alone, would have induced it to make the decisions." Ib. 4476

ARGUMENT V - EMPLOYER'S BURDEN UNDER TITLE VII NOT MET

1. A plaintiff in a Title VII suit need not prove discrimination with scientific certainty; rather, his or her burden is to prove discrimination by a preponderance of the evidence. See, e.g., Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 252 (1981). See, also, Bazemore v. Friday, Nos. 85-93 and 85-428, cert. to 4th Cir. CA, July 1, 1986, page 13; Grano v. Department of Development, 637 F.2d 1073, 1081-1082 (6th Cir.,. 1980).

2. Petitioner submits that he has presented, by a preponderance of evidence, that he was unlawfully denied equal employment opportunity. The admissible evidence in this case consists of the following facts which clearly show a pattern and practice of unlawful employment discrimination:

a. Petitioner had previously filed charges with the EEOC against Kurtz. Ex.J.

b. Petitioner was, contrary to the laws and regulations of the State of Georgia, denied an interview despite his score of 100; no other person was so denied an interview. Ex. J.

c. Petitioner's affidavit (Ex. K) and the EEOC's findings (Ex.J) demonstrate unlawful activities by the employer.

3. In summary, had the District Court reviewed the "entire record" in this case, focusing on whether there had been intentional discriminaiton against the petitioner, it would have found that more likely than not he was a viction of dis-

crimination. This is so because the petitioner was the only applicant who scored 100 who was denied an interview. See, e.g., U.S. Postal Service Bd. of Governors v. Aikens, 450 U.S. 711, 713-15, 103 S.Ct. 1478, 1481-82, 75 L.Ed.2d 403 (1983).

CONCLUSION

This Court and the majority of the courts of appeal have held that the existence of other legitimate reasons going toward an adverse employment decision does not defeat a claim of discriminatory retaliation where, as here, it has been shown that such retaliation played "any" part in the adverse employment decision.

Petitioner submits that "but for" his statutorily protected opposition and participation he would not have been denied equal employment opportunity. If this decision is allowed to stand, it will discourage other citizens from exercising their First Amendment right, including but not

limited to the right to oppose perceived unlawful employment practices.

In summary, the employer's outright refusal to consider the petitioner's application and the fact that it does not have Black persons in management positions (Ex. J) are clear indications of proof of unlawful employment discrimination.

Based on the foregoing, petitioner requests this Court vacate the judgment of the trial court and remand this case for trial.

Respectfully submitted,

Curtis L. Wrenn, Pro Se

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Petition for Writ of Certiorari was mailed to The Attorney General, State of Georgia, 132 State Judicial Building, Atlanta, GA 30334, this 13TH day of December, 1989, via U.S. mail, postage prepaid.

Curtis L. Wrenn

IN

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

NO_____

CURTIS L. WRENN
P. O. Box 203
Fort Drum, NY 13603,
Petitioner.

vs

JAMES G. LEDBETTER, COMMISSIONER
DEPARTMENT OF HUMAN RESOURCES
STATE OF GEORGIA
47 Trinity Avenue. S.W.
Atlanta, GA 30334

-and-

MYERS R. KURTZ, INDIVIDUALLY AND AS
SUPERINTENDENT OF CENTRAL STATE HOSPITAL
Central State Hospital
Milledgeville, GA 31062,
Respondents.

PETITIONER'S APPENDIXES

CURTIS L. WRENN, PRO SE
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United States Court of Appeals
Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

Miguel J. Cortez
Clerk

In Replying Give Number
Of Case And Names of Parties

September 19, 1989

MEMORANDUM TO COUNSEL OR PARTIES:

RE: 88-8738 Wrenn v. Ledbetter
DC DKT NO.: 85-04737 1-CV-JOF

The enclosed order has been entered on petition(s) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.

Sincerely,

/s/MIGUEL J. CORTEZ, Clerk

Reply To: Wendi Mason (404) 331-3836

Encl.

REHG-1 (7/87)

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 88-8738
Non-Argument Calendar

D. C. Docket No. 1:85-4737

CURTIS L. WRENN,

Plaintiff-Appellant,

versus

JAMES G. LEDBETTER,
Commissioner, Department
of Human Resources, State
of Georgia,
MYERS R. KURTZ, Individually
and as Superintendent of
Central State Hospital,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

(June 22, 1989)

Before FAY, ANDERSON AND EDMONDSON, Circuit Judges.

PER CURIAM:

A de novo review of the record convinces us that

both the summary judgement granted in favor of the defendants and the sanctions imposed upon the plaintiff are fully supported and were proper.

Affirmed.

United States Court of Appeals

For The Eleventh Circuit

No. 88-8738
Non-Argument Calendar

D. C. Docket No. 1:85-4737

CURTIS L. WRENN,

Plaintiff-Appellant,

versus

JAMES G. LEDBETTER,
Commissioner, Department of Human
Resources, State of Georgia,
MYERS R. KURTZ, Individually
and as Superintendent of
Central State Hospital,

Defendants-Appellees.

Appeal from the United States District Court for the
Northern District of Georgia

Before FAY, ANDERSON and EDMONDSON, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Georgia, and was taken under submission by the Court upon the record and briefs on file, pursuant to Circuit Rule 34-3;

ON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the

same is hereby AFFIRMED;

IT IS FURTHER ORDERED THAT plaintiff-appellant pay to defendants-appellees, the costs on appeal to be taxed by the Clerk of this Court.

Entered: June 22, 1989
For the Court: Miguel J. Cortez, Clerk

By: /s/David Moland
Deputy Clerk

ISSUED AS MANDATE: SEP 27, 1989

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

NO. 88-8738

CURTIS L. WRENN,
Plaintiff-Appellant,

versus

JAMES G. LEDBETTER,
Commissioner, Department of Human Resources,
State of Georgia
MYERS R. KURTZ, Individually and as
Superintendent of Central State Hospital,

Defendants-Appellees.

Appeal from the United States District Court for the

Northern District of Georgia

ON PETITION(S) FOR REHEARING AND SUGGESTION(S) OF REHEARING IN BANC

(Opinion June 22, 1989, 11 Cir., 198__, ___ F.2d____).

(September 19, 1989)

Before FAY, ANDERSON and EDMONDSON, Circuit Judges.

PER CURIAM:

( ) The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing in banc (Rule 35,

Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing In Banc are DENIED.

( ) The Petition(s) for Rehearing are DENIED and the Court having been polled at the request of one of the members of the Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing In Banc are also DENIED.

( ) A member of the Court in active service having requested a poll on the reconsideration of this cause in banc, and a majority of the judges in active service not having voted in favor of it, Rehearing IN Banc is DENIED.

ENTERED FOR THE COURT:

/s/Signature Eligible
United States Circuit Judge

ORD-42

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CURTIS L. WRENN, :

Plaintiff, :

vs. : CIVIL ACTION NO.
1:85-CV-4737-JOF

JAMES G. LEDBETTER, :
Commissioner, Department
of Human Resources, :
State of Georgia, et al.,
:

Defendants.

ORDER

This employment discrimination action is before the court on cross motions for summary judgment, on the plaintiff's motion to extend time to respond to the defendants' motion for summary judgment, and on the plaintiff's motion for leave to file a reply to the defendants' response on his motion for reconsideration. The latter two motions will be GRANTED as unopposed. For the reasons discussed below, the defendants' motion for summary judgment will be GRANTED and the plaintiff's motion for summary judgment will be DENIED.

I. FACTS[1]

The plaintiff was employed as the Superintendent of the Toledo Mental Health Center in Toledo, Ohio from November 1979 until he was removed from the position in December 1980. The plaintiff was removed from the position by the director of the mental health center, Donald E. Widman, because of a lack of confidence in the plaintiff's removal was reviewed and upheld by defendant Kurtz, who was at the time the Director of the Ohio Department of Mental Health.

The plaintiff then applied for and was refused several vacant positions with the Ohio Department of Mental Health. The plaintiff subsequently filed several lawsuits challenging his removal and the State of Ohio's failure to hire him

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[1] In ruling on these motions for summary judgment, all pleading, motions, and discovery material on file with the Clerk's office as of the date of this order have been considered.

to the vacant positions.[2] The district court in Ohio granted summary judgment against the plaintiff on his failure to hire claim. Wrenn v. Kurtz, Nos. C81-665, C82-205 (N.D.Ohio Mar. 9, 1984), vacated on other grounds, No. 84-3228 slip op. (6th Cir. Mar. 11, 1985). After trial, the court entered a verdict against the plaintiff on his discriminatory termination and retaliatory discharge claims. Wrenn v. Benson, No. C81-571 (N.D.Ohio Feb. 5, 1987).

Defendant Kurtz assumed the position of Superintendent of Central State Hospital, Georgia Department of Human Resources, on September 16, 1983. At the time of his appointment, the position of Director of the Georgia War Veterans Home remained open. In order to appoint the appropriate individual for the position, defendant Kurtz appointed a selection committee to review applications and to recommend three individuals to him for interviews.

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[2] At last count, the plaintiff was able to specify at least thirty-one federal lawsuits and 133 charges of discrimination that he has filed in at least twenty-nine states against various employers or would-be employers.

In August 1983 the plaintiff submitted an application to Central State Hospital for the position of Director of the Georgia War Veterans Home. Before the list of applicants was referred to the selection committee, defendant Kurtz reviewed the list and removed the plaintiff's name from consideration by the committee. The plaintiff was the only individual on the list known to defendant Kurtz. Defendant Kurtz removed the plaintiff's name from consideration because "[he would] not hire someone that [he] fired or upheld a firing in any management position," regardless of the reason the person was fired. Defendant Kurtz believed that it would not be necessary for the plaintiff to travel to Georgia for an interview when he would not be considered for employment due to the previous termination from his position at the Toledo Mental Health Center.

As Superintendent of Central State Hospital, defendant Kurtz had the sole authority to hire the director of the Georgia War Veterans Home, a position that reports directly to defendant Kurtz.

In December 1983, defendant Kurtz appointed Alice K. Paschal to the position. Ms. Paschal had been employed at Central State Hospital for twenty-one years, had worked in administrative positions, including the positions of unit director and acting director, and, at the time of her selection, was acting director of the Georgia War Veterans Home. Ms. Paschal was one of three people recommended for the position by the selection committee. Defendant Kurtz chose Ms. Paschal, ranked second by the selection committee, because he believed that she was the best qualified applicant based on his evaluation of her performance and review of her record.

II. DISCUSSION

In this action, the plaintiff proceeds under Title VII and 42 USC 1981, 1983 and 1983. In addition, the plaintiff includes a claim for common law defamation. The plaintiff is suing the Georgia Department of Human Resources, James G. Ledbetter in his official capacity of Commissioner of the Department of Human Resources, and defendant Kurtz,

both individually and in his official capacity as Superintendent of Central State Hospital. Each of the plaintiff's claims will be discussed in turn.

A. Title VII Claims

Under Title VII, the plaintiff asserts two grounds for recovery: discriminatory failure to hire and retaliatory failure to hire. Claims of discriminatory failure to hire are analyzed under the following framework:

> The complainant in a Title VII trial must carry the initial burden under the statute of establishing a prima facie case of racial discrimination. This may be done by showing (i) that he belongs to a racial minority; (ii) that he applied and was qualified for a job for which the employer was seeking applicants; (iii) that, despite his qualifications, he was rejected; and (iv) that, after his rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications.

McDonnell-Douglas Corp. v. Green, 411 U.S. 792, 802

(1972).[3] The Eleventh Circuit Recently described how the burden of proof shifts between the parties after the prima facie case is established:

> If plaintiff can establish a prima facie case, a presumption arises that defendant fired [or failed to hire] plaintiff for discriminatory reasons. Defendant can easily rebut this presumption, however, by articulating some legitimate business reason for its actions. Once defendant states a legitimate reason, plaintiff must show that defendant's articulated reason is merely a pretest and that defendant's true reason for discharging plaintiff was discrimination. Plaintiff can establish pretext by showing that despite the stated business reason, plaintiff would not have been fired but for discrimination, or by proving that employer's explanation is not credible.

---

[3] The plaintiff's contention that the EEOC finding of reasonable cause in connection with his removal from the Toledo Mental Health Center position constitutes direct evidence of discrimination is without merit. Direct evidence is "[e]vidence, which if believed, proves existence of fact in issue without inference or presumption." Black's Law Dictionary 413 (5th ed. 1979), quoted in Rollins v. TechSouth, Inc., 833 F.2d 1525, 1528 n. 6 (11th Cir. 1987). It is clear that a reasonable cause determination by the EEOC does not constitute direct evidence of discrimination under the above standard. In fact, EEOC reports are not binding on district courts and a court is not obliged to address or even refer to EEOC findings in its opinion. Moore v. Devine, 767 F.2d 1541, 1550-51 (11th Cir. 1985).

Rollins, 833 F.2d at 1528-29.

In this case, the defendants concede arguendo the plaintiff's prima facie case and argue that the plaintiff was not hired for a legitimate non-discriminatory reason: It is defendant Kurtz's "managerial policy not to hire an individual whom [he has] either terminated from employment or upheld the removal from a position." Kurtz Aff., para. 7. The court agrees with the defendants that the plaintiff fails to produce any evidence that the defendant's articulated reason is merely a pretext.

First, the defendant's explanation is credible, as required by Rollins, 833 F.2d at 1529. As the Sixth Circuit Court of Appeals noted in the plaintiff's previous suit against defendant Kurtz,

> The trial court concluded that Wrenn was not considered for the advertised positions because of his previous discharge as superintendent of TMHC. That discharge could furnish a legitimate, non-discriminatory reason for defendants' refusal to consider him for like positions . . . if it were established that the prior discharge was for cause and was itself not motivated by considerations of either Wrenn's race or his participation in

protected activity.

Wrenn v. Kurtz, No. 84-3228 slip op. at 3. The trial court did subsequently determine that the prior discharge was for cause and was not discriminatory. Wrenn v. Benson, No. C81-571 slip op. at 2-3.

Second, it is pointless for the plaintiff to argue that his removal from the Toledo Mental Health Center position was itself discriminatory. That claim has already been decided against the plaintiff in Wrenn v. Benson and he is estopped from re-litigating the issue here. Third, contrary to the plaintiff's argument, there is no evidence that defendant Kurtz's "managerial policy" was a new qualification specially created in order to discriminate against the plaintiff. The cases cited by the plaintiff dealing with job qualifications applied discriminatorily are inapposite since the plaintiff has produced no evidence that defendant Kurtz applied his policy differently to other applicants for this position or for any other position.

The framework for analyzing claims or retaliatory failure to hire is similar to the framework for discriminatory failure to hire claims. The "plaintiff must establish (1) actions protected by the statute, (2) an adverse employment decision, and (3) a causal link between the protected actions and the adverse employment decision." Tompkins v. Morris Brown College, 752 F.2d 558, 565 n. 18 (11th Cir. 1985). The burden of going forward then shifts to the defendant to articulate some legitimate, non-discriminatory reason for the adverse decision. Hamm v. Members of Board of Regents of State of Florida, 708 F.2d 647, 654 (11th Cir. 1983).

In this case, it is doubtful that the plaintiff has established even a prima facie case, since the only evidence of a causal link between his previous attempts to vindicate his rights under Title VII and the rejection of his application for the position at issue here is the chronology of the two events. Even if the plaintiff has properly established a prima facie case, however, the defendants have articulated a legitimate non-

discriminatory reason for their decision not to hire the plaintiff which the plaintiff has failed to rebut, as discussed above. The necessary conclusion is that the defendants are entitled to judgment as a matter of law on the plaintiff's Title VII claims.

B. Section 1981 and 1983 Claims

The McDonnell-Douglas framework applies to the plaintiff's section 1981 and section 1983 claims as well. See Conner v. Ft. Gordon Bus Company, 761 F.2d 1495, 1498 (11th Cir. 1985) (section 1981); Lee v. Russell County Board of Education, 684 F.2d 769, 773 (11th Cir. 1982) (section 1983). The same result necessarily follows: the defendants have articulated a legitimate non-discriminatory reason for their actions and the plaintiff has failed to introduce any evidence that the asserted justification is pretextual. Accordingly, the defendants are entitled to judgment as a matter of law.

C. Section 1985 Claim

To make out a violation of 42 USC 1985(3), the plaintiff must allege and prove four elements:

(1) a conspiracy: (2) For the

> purpose of depriving, either directly or indirectly, any person or class or persons of the equal protection of the laws; or of equal privileges and immunities under the laws; and (3) an act in furtherance of the conspiracy; (4) whereby a person is either injured in his person or property or deprived of any right or privilege of a citizen of the United States.

Carpenters v. Scott, 463 U.S. 825, 829 (1983). In light of the court's conclusions above as to the plaintiff's Title VII, section 1981, and section 1983 claims, it is clear that the plaintiff has failed to establish that he was injured or deprived of any right or privilege by the defendant's actions, even assuming that the other elements of a section 1985 claim were present. Moreover, section 1985 prohibits only those conspiracies that are "motivated by 'some racial, or perhaps otherwise class-based, invidiously discriminatory animus.'" Id., quoting Griffin v. Breckenridge, 403 U.S. 88, 102 (1971). As discussed above, the plaintiff in this case has produced no evidence that the defendants' actions were the result of either racial bias or retaliation for previous civil rights

complaints.

D. Defamation Claim

The defendant's motion for summary judgment on the plaintiff's defamation claim must also be granted. First, the plaintiff fails to respond to the summary judgment motion as to the defamation claim and the motion is therefore deemed unopposed. Local Rule 220-1(b)(1). Second, the actions of which the plaintiff complains simply do not amount to defamation under Georgia law. In his complaint, the plaintiff alleges that defendant Kurtz has made "unwarranted, untrue and unsupported statements that plaintiff was fired by State of Ohio for poor performance of duty." During the course of this action, the plaintiff has failed to elaborate on the allegations of his complaint by specifying any particular statements at any particular time to any particular person. The only evidence in the record is defendant Kurtz's own testimony that he never received any inquiries regarding the plaintiff's employment in Ohio and that he has not given any employment reference concerning the plaintiff.

Kurtz Aff., para. 6. Defendant Kurtz's "employment reference" regarding the plaintiff's application for the position at issue in this case was limited to the statement that he had upheld the plaintiff's removal from a position in Ohio, without any indication of the reasons for the removal. Kurtz Aff., para. 7. That statement was untrue and cannot be the basis for a defamation claim. See O.C.G.A. 51-5-6.

III. OTHER MOTIONS.

The plaintiff's motion to extend time to respond to the defendants' motion for summary judgment was unopposed and is therefore GRANTED. The plaintiff's motion for leave to file a reply to the defendants' response to the plaintiff's motion for reconsideration is unnecessary under Local Rule 220-1(b)(2), but the motion will be GRANTED for purposes of the record.

IV. CONCLUSION.

In summary, the defendants' motion for summary judgment on the plaintiff's Title VII, section 1981, section 1983, and section 1985 claims

is GRANTED and the plaintiff's motion for summary judgment on the same claims is DENIED. The defendants have articulated a legitimate non-discriminatory reason for their decision not to hire the plaintiff and the plaintiff has introduced no evidence that the asserted justification is pretextual. The plaintiff's failure to establish the existence of an element essential to his case and on which he bears the burden of proof requires that the defendants' motion for summary judgment be granted. Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

The Defendants' motion for summary judgment on the plaintiff's defamation claim is GRANTED because the plaintiff has produced no evidence on any false statements. Finally, the plaintiff's motion to extend time to respond to the defendants' motion for summary judgment is GRANTED and the plaintiff's motion for leave to file a reply is GRANTED. The response and the reply will be accepted as filed.

The stay entered at the May 17, 1988

hearing is hereby lifted and judgment should be entered for the defendants for costs plus the $100 sanction imposed at the May 17th hearing.

SO ORDERED this 21st day of June, 1988.

/s/J. OWEN FORRESTER
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CURTIS L. WRENN,	:	
Plaintiff,	:	
vs.	:	CIVIL ACTION NO. 1:85-CV-4737-JOF
JAMES G. LEDBETTER, Commissioner, Department of Human Resources, State of Georgia, et al.,	:	
Defendants.	:	

ORDER

This action is before the court on the plaintiff's motion for reconsideration of the court's March 16, 1988 order denying the plaintiff's motion for appointment of counsel. The motion for reconsideration, having been read and considered, is DENIED. The court reiterates that the plaintiff is ORDERED to show cause at a hearing on May 17, 1988 at 4:30 p.m., why Rule 11 sanctions should not be imposed against him for attempting to mislead the court about his financial status.

SO ORDERED, this 19th day of April, 1988.

/s/J. OWEN FORRESTER
UNITED STATES DISTRICT JUDGE

CURTIS L. WRENN
P. O. BOX 1691
Albany, NY 12201

Telephone:
(518) 477-2508

April 30, 1988

Mr. Luther D. Thomas, Clerk
United States District Court
Northern District of Georgia
Atlanta, GA

RE: Wrenn v. Ledbetter, Civil Action No. 1:85-CV-4737-JOF

Dear Mr. Thomas:

Enclosed please find the Order of the Court of April 21, 1988. Please note that pursuant to that Order I will appear before the Court to "show cause" ... why Rule 11 sanctions should not be imposed ..."

In that connection, I DO NOT have any statements or facts which I can refer to help me define and/or to understand the Court's allegation of "attempting to mislead the court about his financial status." Accordingly, this is to respectfully request that you and/or the Court and/or the presiding judge provide me with a copy of Rule 11 and a short statement outlining how and/or in what manner I allegedly "mislead the court about my financial status" in making a request to the Court for the appointment of legal counsel to represent me in this case. The requested information is URGENTLY needed to assist me in determining what documents to bring with me, and in formulating my presentation to the Court.

Thank you for your assistance.

Very truly yours,

/s/Curtis L. Wrenn

Enclosure

cc: Counsel for Defendants

CERTIFIED MAIL P713962689

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CURTIS L. WRENN,	:	
Plaintiff,	:	
vs.	:	CIVIL ACTION NO. 1:85-CV-4737-JOF
JAMES G. LEDBETTER,	:	
Defendant.	:	

O R D E R

Plaintiff's letter of June 4, 1988 has been received. It will be filed with the Clerk of Court. Communications in this form requesting action by the court are prohibited by Local Rule 215-1(b) NDGa. For the reasons expressed in Tate v. IBM, 94 F.R.D. 324 (N.D.Ga. 1982), this correspondence will not be treated as a pleading. The court is most willing to consider any point raised in any pleading made in compliance with Rule 7(b) of the Federal Rules of Civil Procedure and Local Rule 220, et seq. NDGa.

SO ORDERED THIS 17th day of June, 1988.

/s/J. OWEN FORRESTER
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CURTIS L. WRENN, Plaintiff,	:	
	:	JUDGMENT IN A CIVIL CASE
v.	:	
JAMES G. LEDBETTER, Commissioner, Department of Human Resources, State of Georgia, MYERS R. KURTZ, individually and as Superintendent of Central State Hospital, Defendants.	:	Case Number: 1:85-CV-4737-JOF

DECISION BY COURT. This action came for consideration before the Court. The issues have been considered and a decision has been rendered, having granted defendant's motion for summary judgment.

IT IS HEREBY ORDERED AND ADJUDGED that the plaintiff, CURTIS L. WRENN, take nothing, that the action be dismissed and that the defendants, JAMES G. LEDBETTER and MYERS R. KURTZ, recover from the plaintiff, CURTIS L. WRENN, their costs of action plus the amount of ONE HUNDRED DOLLARS ($100.00) as sanction imposed at the May 17th hearing.

Date: July 1, 1988

LUTHER D. THOMAS, CLERK

/s/Kevin Moeggenberg
Deputy Clerk

File and Entered
in the Clerk's Office
July 1, 1988
LUTHER D. THOMAS, Clerk

By: /s/K. Moeggenberg
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CURTIS L. WRENN,	:	
Plaintiff,	:	
vs.	:	CIVIL ACTION NO. 1:85-CV-4737-JOF
JAMES G. LEDBETTER, et al.,	:	
Defendants.	:	

O R D E R

This action is before the court on the plaintiff's motion for appointment of counsel and on the defendants' motion for sanctions for responding to the plaintiff's motion. The plaintiff's motion for appointment of counsel will be denied because the plaintiff fails to establish his poverty, which is a prerequisite for appointment of counsel under 28 USC Subsection 1915(d). According to the plaintiff, his current annual salary is $12,880; he was unemployed from July 24, 1985 to November 23, 1986; his total earnings in 1986 were $985.60; he owns a home with a market value of approximately $72,000, but is unable to borrow on the equity in the house because it is the subject of liens and

judgments from various creditors; he has $51 in his checking account; and he has a wife and three dependent children. It is not necessary for the court to decide whether the above facts, if true, would be sufficient to establish poverty under Subsection 1915(d) because the defendants have pointed to substantial evidence that the plaintiff's affidavit of poverty is false or misleading. Attached to their motion for sanctions, the defendants have submitted the plaintiff's 1985 and 1986 federal income tax returns, which they obtained in response to their deposition subpoena. The 1985 return lists the plaintiff's total family income at $83,627 and his individual income at $49,752. The 1986 return lists the plaintiff's family income at $48,183 and his individual income at $15,302. In addition, the defendants point to a recent order of the United States District Court for the Northern District of Ohio denying the plaintiff's motion for leave to proceed on appeal in forma pauperis, Wrenn v. Department of Mental Health, State of Ohio, No. C83-493 (N.D.Ohio, May 22, 1987). The Ohio court

noted the plaintiff's contention that his total monthly living expenses and debt payments exceeded his total monthly income, but concluded that he has not financially eligible to proceed in forma pauperis because he and his spouse "operate on a substantial combined annual income of over $40,000 from which regular debt payments are made." Id.

In light of the above evidence, the plaintiff's motion for appointment of counsel is DENIED. Moreover, the plaintiff is hereby ORDERED to show cause at a hearing to be held on May 17, 1988 at 4:30 P.M. why Rule 11 sanctions should not be imposed against him for attempting to mislead the court. The court has reason to believe, based on the evidence outlined above, that the plaintiff's motion for appointment of counsel was not "well grounded in fact" as required by Rule 11. Consideration of the defendants' motion for sanctions will be STAYED pending the show cause hearing.

SO ORDER, this 7th day of March, 1988.

/s/J. OWEN FORRESTER
UNITED STATES DISTRICT JUDGE

RECORDS AUTHENTICATION CERTIFICATE

Attestation of Copy of Official Record

STATE OF GEORGIA,]
] ss.:
COUNTY OF FULTON,]

I, Harris A. Williams, hereby attest that I am the District Director of the Atlanta District Office of the United States Equal Employment Opportunity Commission, that I am custodian of the file numbered 041842260, case styled Wrenn v. Georgia Department of Human Resources, and certify that the Letter of Determination, dated October 21, 1985, annexed hereto is a true and correct copy of those documents in the said file.

IN WITNESS WHEREOF, I have hereunto set my hand, this 20 day of March, 1986.

/s/Harris A. Williams
District Director
United States Equal
Employment Opportunity
Commission
Citizens Trust Bank Bldg.
Suite 1150
75 Piedmont Avenue, N.E.
Atlanta, Georgia 30335

****

Certificate of Legal Custody of Official Record

STATE OF GEORGIA,]
] ss.:
COUNTY OF FULTON,]

I, Floyd C. Hale, of the Atlanta District Office of the United Stated Equal Employment Opportunity Commission, do hereby certify that

Harris A. Williams, who signed the foregoing attestation, was, at the time of signing the same, the District Director of the Atlanta District Office, with lawful custody of the record referred to in said attestation, and that said record is kept within said jurisdiction.

WITNESS my hand and seal, this 21st day of March, 1986.

/s/Floyd C. Hale
NOTARY PUBLIC

My Commission Expires:
December 7, 1986

Atlanta District Office
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Citizens Trust Building, Suite 1150
75 Piedmont Avenue, N.E.
Atlanta, Georgia 30335

Charge No.:041842260

Mr. Curtis Wrenn
P.O. Box 1691
Albany, New York 12201

Charging Party

Georgia Department of
Human Resources
47 Trinity Avenue, S.W.
Atlanta, Georgia 30334

Respondent

DETERMINATION

Under the authority vested in me by the Commission's Procedural Regulations, I issue on behalf of the Commission, the following determination as to the merits of the subject charge.

Respondent is an employer within the meaning of Title VII and the timeliness, deferral and all other jurisdictional requirements have been met. Substantial weight has been accorded the findings of the Office of Fair Employment Practice.

Having examined the Office of Fair Employment Practice's findings and the record presented, I conclude that there is reasonable cause to believe the charge is true.

A review of the record presented indicated that the Office of Fair Employment Practice was unsuccessful in its attempt to settle the matter. The Commission now invites the parties to join with it in a collective effort toward a just resolution of this matter. The parties may indicate their willingness to enter into settlement discussions by completing

the enclosed invitation or by signing the attached draft Conciliation Agreement and returning either to this office in the enclosed self-addressed envelope within 10 days of receipt of this letter.

On Behalf of the Commission:

10/21/85
Date

/s/Harris A. Williams,
(Acting) District Director

Enclosures: (2)

Invitation
Draft Conciliation Agreement

Office of Fair Employment Practices
2 Martin Luther King, Jr., Drive
Suite 1462 - East Corner
Atlanta, Georgia 30334
(404)656-1736

Joe Frank Harris
Governor

Janice J. Christian
Administrator

BOARD

Robert Buckler
Ann Curry
Marymal Dryden
Rebecca Gonzalez
Thomas Jones

BOARD

Bensonetta Lane
H. Michael Mahany
Priscilla Roberts
Tobiane Schwartz

Mr. Curtis Wrenn
P.O. Box 1691
Albany, New York 12201 Charging Party

OFEP 84-0137

Dr. James G. Ledbetter, Commissioner
Department of Human Resources
47 Trinity Avenue, S.W.
Atlanta, Georgia 30334 Respondent

DETERMINATION

Under the authority vested in me by the Fair Employment Practices Act of 1978, as amended, and the Rules and Regulations of the Office of Fair Employment Practices, I issue on behalf of this office the following determination with respect to the subject charge:

The Charging Party alleges that the Respondent discriminated against him because of his race (Black) and age (40-70) and retaliated against him for opposing discriminatory employment practices and for filing previous discrimination complaints by not hiring him to the position of Director of The Georgia War Veterans Home.

Timeliness and all jurisdictional requirements have been met.

Examination of the evidence indicates that there is reasonable cause to believe that the allegations(s) are true, in part.

Examination of the evidence indicates that there is not reasonable cause to believe that the Charging Party was not selected to the position of Director because of his age (40-70). Therefore, this allegation is hereby dismissed. Should the Charging Party wish to pursue this allegation further, the Charging Party may apply to the Administrator for reconsideration of this order of dismissal. The application must be made in writing within ten days of receipt of this letter.

Examination of the evidence indicates that there is reasonable cause to believe that the Charging Party was not selected to the position of Director because of his race (Black) and for opposing discriminatory employment practices and for filing previous Title VII discrimination complaints for the following reasons:

> Evidence reveals that the advertised qualifications for the position of Director required an undergraduate degree in business administration, nursing or a related therapeutic field. The selectee, a White female, did not meet this requirement because she had only a three-year certificate in nursing.
>
> The Charging Party has an undergraduate degree in Business Administration and a Masters degree in Health Care Administration. The Charging Party also has more job-related experience than the selectee. Charging Party received a higher rating on the Merit System list of eligible, 100, than did the selectee, who received a score of 91.

Evidence and testimony reveal that the Superintendent of Central State Hospital has been the object of several prior discrimination complaints and suits filed by the Charging Party when they were both employed by the Ohio Department of Mental Health and Mental Retardation. These charges resulted in twelve reasonable cause findings by two federal agencies. The Charging Party has also filed a previous charge with OFEP against the Respondent.

Testimony indicates that Charging Party was not interviewed for the position of Director because the Superintendent was "aware of his poor performance with the Ohio Department of Mental Health and Mental Retardation."

The Respondent's position appears to be pretextual for several reasons. First, the EEOC determined that Charging Party had been discriminated against by the Ohio Department of Mental Health and Mental Retardation when he was discharged in 1980. There was no evidence the Charging Party had performed his duties in an unsatisfactory manner. Second, the Charging Party was the only person with a score of 100 who was not given the opportunity to be interviewed. The Superintendent actively intervened in the selection process to eliminate Charging Party from consideration but did not intervene to eliminate anyone else. The Respondent's policy requiring that all eligible be interviewed was violated by the Superintendent's refusal to consider Charging Party for an interview.

Respondent currently employs no Black Shift Supervisors, Unit Directors, or Directors.

In the context of the total evidence presented and considered, there is reasonable cause to believe that the Charging Party has been discriminated

against because of his race (Black) and retaliated against for opposing discriminatory employment practices and for filing previous Title VII discrimination complaints. The Office of Fair Employment Practices now invites the parties to join with it in a collective effort toward a just resolution of this matter. In the near future, each party will be notified of the initiation of the conciliation process.

On Behalf of this Office

5-24-85
Date

/s/Janice J. Christian
Administrator

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

CURTIS L. WRENN,

Plaintiff

vs

JAMES G. LEDBETTER, et al.,

Defendants.

Civil Action No.
C 85-4737 A

JUDGE FORRESTER

AFFIDAVIT OF
CURTIS L. WRENN

NOW COMES the plaintiff, Curtis L. Wrenn, to state the following:

I was born to King George and Viola Head Wrenn on February 14, 1930 in Emille, Alabama.

I am a graduate of A. H. Parker High School, Birmingham, Alabama. My post-high education includes various military schools prior to my retirement from the United States Army on December 1, 1970; a bachelor degree in Business from the University of Nebraska-Omaha; a certificate in Health Care Administration from the University of Alabama-Birmingham; and a master's degree in Health Care Administration from the Medical College of Virginia-Virginia Commonwealth University.

My professional recognition includes being elected a Fellow in the American Academy of Medical

Administrators.

My work experience in hospital health care administration includes the following:

1. Administrator, Richmond Community Hospital, Richmond, Virginia, from November 1970 to August 1973.

2. Administrative Resident, Medical Center Hospitals, Norfolk, Virginia, from August 1974 to April 1975.

3. Corporate Director of Personnel, Medical Center Hospitals, Norfolk, Virginia, from April 1975 to April 1976.

4. Associate Director for Administration, University of Maryland Hospital, Baltimore, Maryland, form May 1976 to July 1978.

5. Administrator/Chief Executive Officer, Anoka State Hospital, Anoka, Minnesota, from August 1978 to December 1979.

6. Superintendent, Toledo Mental Health Center, Toledo, Ohio, from December 1979 to December 1980.

7. Self-employed health care management consultant, Minority Health Care Consultant, Inc.,

from January 1981 to September 1983.

8. Executive Director, Whitney M. Young, Jr. Health Center, Inc., Albany, New York, form October 1983 to October 1985.

During the summer of 1983, in response to an announcement and/or advertisement of the Department of Human Resources, State of Georgia, I submitted my resume for consideration for the position of Director, Georgia War Veterans Home. I was informed by letter dated August 9, 1983 that "In addition to your resume, we will need for you to fill out the enclosed Merit System applications . . ." I completed and submitted the Merit System application forms.

I was informed by letter dated October 21, 1983 the "The selection process has begun for this job and your application is under consideration. If a personal interview is deemed necessary you will be advised accordingly."

I received no further information from Central State Hospital nor was I contacted regarding a personal interview or to provide employment

references.

In April 1984 I wrote Central State Hospital and requested the status of my application. I was informed by letter dated April 20, 1984 that "The applicant selected assumed this position on December 1, 1983". No other information was provided concerning why I was not interviewed or why I was not selected for the position.

On or about May 1, 1984 I mailed a charge of continuing employment discrimination against the Central State Hospital, to the EEOC. The EEOC acknowledged receipt of the charge on May 4, 1984. The EEOC deferred the charge to the Georgia Office of Fair Employment Practices, on or about June 27, 1984.

On or about May 24, 1985 the Georgia Office of Fair Employment Practices issued its Determination that "Examination of the evidence indicates that there is reasonable cause to believe that the Charging Party was not selected to the position of Director because of his race (Black) and for opposing discriminatory employment practices and for

filing previous Title VII discrimination complaints ..."

On or about July 26, 1985, after the employer declined to conciliate, I submitted a letter to the Georgia Office of Fair Employment Practices in which, among other things, I requested that "the charge be referred back to the EEOC and that that agency issue me a Notice of Right to Sue".

On or about October 21, 1985 the Atlanta District Office of the EEOC issued its Determination that "Having examined the Office of Fair Employment Practice's findings and the record presented, I conclude that there is reasonable cause to believe the charge is true."

Although I have received a copy of the two Determinations, I have not received the requested Notice of Right to Sue.

On or about December 20, 1985 I filed my Complaint in this Court, alleging, among other things, that I had been denied employment for the position of Director of the Georgia War Veterans Home because of my race (Black) and for opposing

discriminatory employment practices.

The above statement is voluntarily made under the penalty of perjury pursuant to the laws of the United States of America.

AFFIDAVIT

STATE OF NEW YORK)

) ss

COUNTY OF ALBANY)

Subscribed and sworn to before me this 13th day of January, 1986.

/s/CURTIS L. WRENN

/s/Richard W. Bennett
Notary Public
State of New York
Qualified in
Albany County
Reg No. ?
Commission Expiration ?

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

CURTIS L. WRENN,

Plaintiff-Appellant,

VS

JAMES G. LEDBETTER, ET AL.,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN
DISTRICT OF GEORGIA

BRIEF OF PLAINTIFF-APPELLANT

CASE NO 88-8738

Curtis L. Wrenn, Pre Se
P. O. Box 203
Fort Drum, NY 13603
Tel: (315)772-4021

Rita J. Llop, Esq.
Assistant Attorney
General
132 State Judicial Bldg.
Atlanta, GA 30334

STATEMENT OF ORAL ARGUMENT

Oral argument is desired. The reason being is that the plaintiff has suffered the indignities of more than eight years of not being able to obtain employment in his chosen profession of hospital and health care administration, because of the continuing retaliation by present and former employees of the State of Ohio. This is not a simple case of a member of a protected class being denied employment, but extend to the arena of nationwide efforts by federal agencies and officials of various States to deprive one citizen of the right to equal employment opportunity and the right to seek legal redress against those who have discriminated against him.

The primary reason for desiring oral argument is for the plaintiff to respond to ANY questions and/or concerns the Court may have regarding his primary contention and that is "A review of the facts in this case will clearly demonstrate that the defendants did not prove "conclusively that no

genuine issue of material fact exist, ..." See, e.g., FRCP 56(a); Smith v. Hudson, (6th Cir 1979), 600 F.2d 60.

STATEMENT OF THE CASE

1. Plaintiff was formerly employed by the Ohio Department of Mental Health (ODMH) from December 1979 to December 1980, when he, without being charged and without any prior notice or explanation, was summarily removed. Plaintiff filed a charge of unlawful employment discrimination in connection with that removal with the EEOC, and that federal agency determined "that there is reasonable cause to believe that the allegation of race discrimination is true." See R1-12-4 and Exhibit 4, p.5.

2. Plaintiff submitted an application for the position of Director, Georgia War Veterans Home, a position which the State of Georgia was accepting applications from individuals with plaintiff's qualifications. Despite his qualifications the plaintiff was not interviewd. See R2-54-7; Exhibit 5.

3. The denial of employment for the position of Director, Georgia War Veterans Home was the second time the plaintiff had been denied employment by the State of Georgia. The plaintiff filed a second

charge with the EEOC and OFEP against the State of Georgia (the first charge having been filed in connection with the denial of employment for the position of Superintendent). The OFEP and EEOC determined that "the evidence indicates that there is reasonable cause to believe that the Charging Party was not selected to the position of Director because of his race (Black) and for opposing discriminatory employment practices and for filing previous Title VII discrimination complaints ..." See Exhibit 4, p.14.

4. The U.S. Department of Justice declined to intervene in the case and issued the plaintiff his Notice of Right to Sue. The Department of Justice declined to assist the plaintiff "Because of our limited resources ...". See R2-49-2. As a result, the plaintiff filed the complaint herein on the basis that he was denied employment, in violation of 42 USC 1981, 1983, 1985(3) and 2000e-3(a).

5. On the basis of the defendants' motion the district court awarded summary judgment to the defendants.

6. The plaintiff filed this appeal on the basis that the defendants did not prove beyond a reasonable doubt their entitlement to summary judgment, and that the district court abused its discretion and that the court's decision was clearly erroneous.

STATEMENT OF THE STANDARD OR SCOPE OF REVIEW

The district court erred in its interpretation and/or application of the rules of law governing employment discrimination based on disparate treatment (McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-05, 5 FEP 965; Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 254, 101 S. Ct. 1089, 094, 67 L.Ed.2d 207 (1981) and/or disparate impact (Watson v. Fort Worth Bank & Trust, Case No. 86-6139, decided June 29, 1988, p.6, 14-19.

The findings of the trial judge are clearly erroneous, in that the findings were contrary to the admissible evidence and/or facts in the case.

The decision of the district court was against the manifest weight of the admissible evidence in the case.

The admissible evidence of record did not support the award of summary judgment to the defendants, in that the evidence did not demonstrate that the defendants proved beyond a reasonable doubt that denial of equal employment opportunity to the plaintiff was not because of his race and/or because

of his previous opposition to employment practices made unlawful by the constitution and laws of the United States and/or because he participated in EEOC proceedings and/or court proceedings against those who denied him equal employment opportunity.

SUMMARY OF THE ARGUMENT

1. Plaintiff established his prima facie case of employment discrimination on the basis of disparate treatment (denied employment consideration because of his previous opposition to employment practices made unlawful by the Constitution and laws of the United States).

2. Plaintiff established his prima facie case of employment discrimination on the basis of disparate impact (denied employment consideration because of his race).

3. The defendants did not prove beyond a reasonable doubt that they were entitled to summary judgment in their favor in the case.

4. The district court abused its discretion in imposing sanctions upon the plaintiff for requesting the court to appoint an attorney to represent him.

5. The decision of the district court granting summary judgment to the defendants was a clear abuse of discretion AND was clearly erroneous, in that the decision was contrary to the manifest weight of the evidence in the case.

6. That a review of the facts in this case will clearly demonstrate that the defendants did not prove conclusively that no genuine issue of material fact exists."

ARGUMENT

Appellant respectfully submits that an independent review of the facts, the complaint, pleading and exhibits, by this Court will find that the decision of the district court was clearly erroneous and must be reversed.

This Court is specifically being asked NOT to defer to the "findings" of the district court, but rather to review the case on three grounds, namely; (1) the clearly erroneous standards announced in Pullman-Standard v. Swint, 456 U.S. 273, 293 (1982), (2) to consider that since the decision of the district court rests solely on "documentary evidence", this Court is in a position to render its own findings of facts (See, e.g., Lydle v. United States, 635 F.2d 763, 765 n.1 (6th Cir 1981); and (3) as will be argued below, the district court applied an erroneous view of the laws governing unlawful discrimination on the basis of disparate treatment and/or disparate impact. See, e.g., Johnson v. Uncle Ben's Inc., (CA 5th Cir 1980), 618

F2d 419. Also, the district court violated Rule 54(b) of the Federal Rules of Civil Procedure, in that the decision of the court did not reflect a separate decision on each of the plaintiff's claim, i.e., race (42 USC 1981, 1983 and 2000e), retaliation (42 USC 1981, 1983 and 2000e), and conspiracy to deprive plaintiff of rights, privileges and immunities secured to him under the Constitution and laws of the United States under the color of state law (42 USC 1983); and a conspiracy to prevent plaintiff's employment in his chosen profession of hospital and health care administration (42 USC 1985(3)).

The Court is also being asked to consider that the district court denied plaintiff's request for the appointment of counsel without considering the merits of his case. Also, the district court fined the plaintiff allegedly because he misled the court WITHOUT informing him just how he was supposed to have misled the court. The district court nor the defendants presented ANY facts and/or evidence to

demonstrate that the plaintiff filed a false claim and/or submitted false statements.

A. THE DETERMINATION OF THE DISTRICT COURT THAT APPELLANT HAD FAILED TO PROVE A CLAIM OF RETALIATION WAS CLEARLY ERRONEOUS IN THAT DEFENDANT-APPELLEE KURTZ WAS AWARE OF APPELLANT'S PROTECTED ACTIVITIES PRIOR TO DECIDING NOT TO CONSIDER HIM FOR THE POSITION OF DIRECTOR, GEORGIA WAR VETERANS HOME.

1. This action is based on an allegation of continuing retaliation by appellee Kurtz and other present and/or former employees of the State of Ohio, in violation of 42 USC 1981, 1983 and 2000e-3(a). Contrary to the District Court the appellant proved his prima facie case on retaliation by showing that he had:

(1) Applied for and was qualified for the position of Director, Georgia War Veterans Home.

(2) Previously filed charges against the State of Georgia, and Appellee Kurtz and other officials of the State of Ohio. See Exhibit 1.

(3) Participated in and/or assisted in EEOC proceedings and/or investigations.

(4) Previously filed lawsuits against Appellee Kurtz and other officials of the State of Ohio. Exhibit 2.

(5) Demonstrated by convincing evidence that

the appellees were aware of his statutorily protected expression and/or activities.

(6) Established that there was a causal connection between his protected activities and the adverse employment action by showing that, among other things, Appellee Kurtz was acutely aware of the charges and lawsuits filed against him, and other officials and former officials of the State of Ohio.

2. A line of cases would support he appellant's contention that he had established a claim of retaliation. See, e.g., Barela v. United Nuclear Corp., (10th Cir 1972), 462 F.2d 149, 4 FEP 831; Sias v. City Demonstration Agency, (CA Cal 1878), 588 F.2d 692; Grant v. Bethleham Steel Corp., (2d Cir 1980), 622 F.2d 43, 22 FEP 1596; Pettway v. American CAst Iron Pipe Co., (CA Ala 1969), 411 F.2d 998, rehearing denied, 415 F.2d 1376; Womack v. Munson (8th Cir 1980), 619 F.2d 1292, 1298, 22 FEP 1079, 1083, cert. denied, 450 U.S. 979 (1981); Smalley v. City of Eatonville (CA Fla 1981), 640 F.2d 765; Parker v. Baltimore & Ohio Railroad (DC

Cir 1981), 652 F.2d 1012, 25 FEP 889; Whatley v. Metropolitan Atlanta Rapid Transit Authority, (CA GA 1980), 632 F.2d 1325; McCollum v. Golger (CA 11th Cir 1986) 794 F.2d 602; East v. Romine, Inc. (5th Cir 1975), 518 F.2d 332, 342, 11 FEP 306; and McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-05, 5 FEP 965. See also Goff v. Continental Oil Co., (5th Cir 1982), 678 F.2d 593, 599 for retaliation under 42 USC 1981.

3. Also, a line of cases under the First Amendment support the appellant's contention that he may not be denied employment because he has lawfully and peacefully opposed employment practices made unlawful by the Constitution and laws of the United States, including but not limited to those practices made unlawful by The Equal Employment Opportunity Act. See, e.g., Waters v. Peterson, (DC Cir 1973), 495 F.2d 91, 98-99; Columbus Educ. Ass'n v. Columbus City School Dist., (6th Cir 1980), 623 F.2d 1155, 1160, 105 LRRM 2016, 2020.

4. Likewise, a line of cases hold that where, as in this case, the employer treated the protesting

employee/applicant differently than the non-protesting employee/applicant, a prima facie case of retaliation has been documented. This is especially true, as here, where the employer deviated from its own practice and the applicant (the appellant) was found to be more objectively qualified than the already employed white female who was promoted to the position at issue. See, e.g., EEOC v. Operating Engineers, Locals 14 and 15, 438 F. Supp. 876, 883-834, 16 FEP 325, 330 (S.D. NY 1977).

5. In summary, the appellant respectfully submits that "but for" his "opposition to unlawful employment practices and his participation in activities protected by Section 7049a) of the EEOC Act, he would not have been excluded from the pool of qualified applicants for the position of Director, of the Georgia War Veterans Home.

B. THE DETERMINATION OF THE DISTRICT COURT GRANTING SUMMARY JUDGMENT IN FAVOR OF THE DEFENDANTS, IN PART, BECAUSE THE PLAINTIFF HAD FAILED TO ESTABLISH A PRIMA FACIE CASE OF EMPLOYMENT DISCRIMINATION WAS CLEARLY ERRONEOUS IN THAT THE PLAINTIFF HAD ESTABLISHED A PRIMA FACIE CASE UNDER BOTH A DISPARATE TREATMENT THEORY AND DISPARATE IMPACT.

1. The factual underpinnings of appellant's claims are the failure of appellee State of Georgia to consider him for employment. It is undisputed that appellant was not even considered for employment, solely because Appellee Kurtz removed his name from the list of qualified applicants. It is further undisputed that no other applicant was subjected to any background or reference check to determine if they had any such employment terminations in their employment history, as was done to the appellant.

2. Relevant analysis under Title VII is the intent of the person making the hiring decision, i.e. appellee Kurtz. In this case the appellees' intent to discriminate against the appellant because of his race (Negroid) and/or to deny him equal employment opportunity is clearly demonstrated by

their action to exclude appellant from the pool of qualified applicants. The undisputed facts show that plaintiff's application was not even fully processed due only to his "prior termination" by the State of Ohio; an employment action which Appellee Kurtz was aware that the EEOC had determined was impermissible and a violation of Title VII. There can be no doubt that such an unequal application of a personnel policy or procedure presents a prima facie case of discrimination. See, e.g., Cohen v. Fred Meyer, Inc., 686 F.2d 793, 29 FEP 1268, 1271 (holding that where a personnel policy was applied in a desperate manner, a prima facie case of retaliatory discrimination is made out despite the facially neutral nature of the policy). See also, McDonnell; Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 254, 101 S. Ct. 1089, 1094, 67 L.Ed.2d 207 (1981); Domingo v. New England Fish Co. (CA Wash 1984), 727 F.2d 1329; and Cuthbertson v. Biggers Bros., Inc. (CA 4th Cir 1983), 702 f.2d 454, 458.

3. Further proof of the employer's disparate

treatment (intent to discriminate) is demonstrated by p. 15 of Exhibit 4, where it was determined that "the Charging Party was the only person with a score of 100 who was not given the opportunity to be interviewed." Moreover, the employer's intent to discriminate is demonstrated by the fact it promoted an already employed but less qualified white person. See Exhibit 10.

4. Likewise, the appellant demonstrated proof of disparate impact, violation of 42 USC 1981 and 2000e et seq.

5. Proof of disparate impact in this case is demonstrated by the employer's tendency to deny equal employment opportunity to Negroid Americans. See p. 15 of Exhibit 4 where OFEP found "Respondent currently employs no Black Shift Supervisors, Unit Directors, or Directors." See. e.g. Carter v. Duncan-Higgins, Ltd. (CA DC 1984), 727 F.2d 1225; Thorne v. City of El Segundo (CA Cal 1983), 726 F.2d 459.

6. In addition the employer, in this case, did not give the appellant the same consideration as it

did similarly situated white applicants. See, e.g., Grano v. Department of Community Development (CA 6th Cir 1980), 637 F.2d 1073, 1081-1082.

7. In the case at issue, the employer's outright refusal to consider the plaintiff's application and the fact that it does not have Black persons in management positions are clear indications of proof of disparate impact. Thus, this case falls within the decision of the Supreme Court that "... the necessary premise of the disparate impact approach is that some employment practices, adopted without a deliberately discriminatory motive, may in operation be functionally equivalent to intentional discrimination." See Watson v. Fort Worth Bank & Trust, Case No. 86-6139, decided June 29, 1988, P.6, 14-19.

C. THE DECISIONS OF THE DISTRICT COURT TO GRANT SUMMARY JUDGMENT TO THE DEFENDANTS AND TO "FINE" THE APPELLANT FOR REQUESTING THE APPOINTMENT OF LEGAL COUNSEL TO REPRESENT HIM, WERE CLEARLY ERRONEOUS AND A CLEAR ABUSE OF DISCRETION.

1. The District Court clearly abused its discretion when it did not, as suggested by the Supreme Court, give deference the determinations made by the EEOC in this and other related cases. See, e.g., Trafficante v. Metropolitan Life Insurance Co., 409 U.S. 205, 210, 93 S. Ct. 364, 367, 34 L.Ed.2d 415 (1972).

2. In addition, the District Court abused its discretion by "fining" the appellant for requesting the appointment of legal counsel to represent him in this case. The decision of the District Court was not based on "reasoned and well-informed discretion." Specifically, the court did not consider plaintiff's financial position caused by years of being denied equal employment opportunity. See, e.g., Moore v. Sunbeam Corp., 459 F.2d 811 (7th Cir 1972); Wrenn v. American Cast Iron Pipe Co., Case No. 77-2627, (5th Cir, June 21, 1978), p. 5061, and the cases therein cited.

3. Based upon the foregoing, the District Court's decision in this case is subject to the clearly erroneous standard of appellate review

articulated in Anderson v. City of Bessemer City, 470 U.S. _____, 105 S. Ct. 1504, 1512, 84 L.Ed.2d 518 (1985) citations omitted. See also, Pullman-Standard v. Swint, 456 U.S. 273, 287-90, 102 S. Ct. 1781, 1789-91, 72 L.Ed.2d 66 (1982).

4. Contrary to the District Court, this case centers around the "proof required to prove discrimination." Appellant respectfully submits that a plaintiff need not prove with scientific certainty his claim of discrimination; rather, his burden is to prove discrimination by a preponderance of the evidence. See, Burdine.

5. In the case at bar, the plaintiff submitted proof to demonstrate his race (Negroid), his qualifications for the position of Director, Georgia War Veterans Home, his previous opposition to perceived unlawful employment discrimination, and the fact that the employer had historically not employed Negroid Americans in senior level management positions in health care management/administration.

6. The District Court's imposition of Rule 11

sanctions against the plaintiff because he exercised a right secured to him by the Constitution and laws of the United States, including but not limited to the First Amendment and Title VII, was a clear malicious abuse of discretion. In addition to "fining" the plaintiff for requesting the court to appoint an attorney to represent him, for reason never explained to the plaintiff the court threatened to have him investigated by the U.S. Attorney (the appellant is assuming of course that the presiding judge was aware at the time of a previous investigation conducted by the FBI and the U.S. Department of Health and Human Services). See, e.g. Slaughter v. City of Maplewood, (8th Cir 1984), Case No 83-1503-EM, and the case therein cited; Neal v. IAM Local Lodge 2386, (CA Miss 1984), 722 F.2d.247.

CONCLUSION

Appellant respectfully submits that "but for" his statutorily protected (42 USC 2000e-3(a)) opposition and participation he would not have been denied equal employment opportunity by the State of

Georgia. The employer's denial of equal employment opportunity, under the color of state law and violation of the Constitution and laws of the United States, must not be condoned by this Court. The appellees' action, if let stand, would have the chilling affect of discouraging citizens from exercising their First Amendment right of free speech, including but not limited to the right to oppose perceived unlawful employment practices. See, e.g., Mt. Healthy City Board of Education v. Doyle, 429 U.S. 274, 97 S. Ct. 568, 50 L.Ed.2d 471 (1977); Keyishian v. Board of Regents, 385 U.S. 589, 605-06, 87 S. Ct. 675, 684-85, 17 L.Ed.2d 629 (1967).

Respectfully submitted,

/s/Curtis L. Wrenn, Pro Se

DATED: 3 Mar 89

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

CURTIS L. WRENN,

Plaintiff-Appellant,

VS

JAMES G. LEDBETTER, ET AL.,

Defendants-Appellees.

ON THE APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN
DISTRICT OF GEORGIA

APPELLANT'S REPLY BRIEF

CASE NO 88-8738

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REPLY BRIEF OF APPELLANT

COMES NOW the appellant to submit the following as his reply to the Brief of Defendants-Appellees:

1. The statement at page 4 that Appellant "failed to certify $14,000.00 in retirement income" is a continuing effort to mislead the court. There was no requirement to state ANY income in support of a request for the appointment of counsel under Title VII, ONLY that the complainant was unable to obtain a counsel and that he could not afford one. In that connection, the appellant used the format he had obtained from the district court in New York (it should be noted that the district court in this case did not request or even suggest a different format or additional information to support the request) which outlines the procedure for requesting to proceed in forma pauperis and to request the court to appoint legal counsel. See Exhibit 1.

2. The statement at page 5 that "combined annual income of over $40,000.00 from which regular debt payments are made" is false and is not based on ANY facts known to the appellant or to any court.

During the past eight years the appellant has continued to incur debts in his effort to vindicate his civil, legal and constitutional rights. The Court's attention is invited to Exhibit 2 which demonstrates the denial of credit, indebtedness, and judgments and/or liens against the appellant.

3. The statement "The Appellant's removal was reviewed and upheld by Appellee Kurtz, who, at the time, was the Director of the Ohio Department of Mental Health." This Court should impose sanctions on the appellees for knowingly submitting a misleading statement. The facts in this case clearly demonstrate that the appellant served as Superintendent of TMHC from December 1979 to December 1980. The facts further show that Appellee Kurtz became director in February 1981, following the departure of the then Director, Timothy Moritz, who was the director throughout appellant's tenure as Superintendent.

4. The facts and argument in this case turn on the central question of whether the appellant was denied equal employment opportunity by the

appellees. Appellee Kurtz maintains that "he would" not hire someone that (he) fired or upheld a firing in any management position," regardless of the reason the person was fired." This statement, standing alone, is sufficient to support appellant's racial and retaliation claims under 42 USC 1981, 1983 and 2000e-e(a). The reason being is that Appellee Kurtz was acutely aware at the time he made the decision to exclude the appellant from the pool of applicants that in at least three charges filed by the appellant with the EEOC against him (Kurtz), that federal agency had found "reasonable cause" to believe that the appellant had been denied equal employment opportunity because of his race and/or retaliation.

5. The appellees' argument at p. 12 that "it is Appellant Kurtz's managerial policy not to hire an individual whom he has either terminated form employment or upheld the removal ..." is not a legitimate reason for denying appellant equal employment opportunity. The appellees have not establish that "previous firing" was one of the job

qualifications requirements and/or criteria. There is no evidence in this case that ANY other applicant was checked to determine whether there was a firing in his employment history. Moreover, the appellee have not demonstrated that "firing from a previous job" is job related to the position at issue in this case. Thus, the ONLY conclusion that can be drawn is that the appellant was denied equal employment opportunity by Appellee Kurtz when he ordered the appellant's name excluded from the pool of applicants. See, e.g., Connecticut v. Teal, 457 U.S. 440, 73 L.Ed.2d 130, 2525.

6. The statement at p. 12 that "The Appellees' explanation for failure to hire the Appellant is credible; it is also based on Appellee Kurtz's prior work experience with the Appellant in the State of Ohio" is patently false. Appellant submits that he has NEVER worked with or for Appellee Kurtz in any capacity either in the State of Ohio or any other state. There are NO facts or admissible evidence in this case which would demonstrate that the appellees' statement is factual or even credible.

7. The appellees' argument at p. 15 that "Appellant submitted no material fact that controverted this fact (Appellee Kurtz's stated reason for removing the appellant's name from the pool of applicant)" is not supported by the evidence in this case. More specifically, the appellant was the ONLY applicant who, based on an alleged background check, was excluded from consideration. Also, and more importantly, Appellee Kurtz violated Georgia civil service law by not permitting the appellant to be interviewed by the selection committee.

WHEREFORE, appellant prays that this Court will remand the case to the district court for trial.

Respectfully submitted,

/s/Curtis L. Wrenn, Pre Se
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was mailed to Rita J. Llop, 132 State Judicial Bldg., 40 Capitol Square, S.W., Atlanta, GA, via regular U.S. mail, postage prepaid, this 28th day of April 1989.

/s/Curtis L. Wrenn